

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

DEUTSCHE BANK NATIONAL  
 TRUSTEE COMPANY, et al.,

Plaintiffs,

v.

WILLIAM CUTLIP, et al.,

Defendants.

Case No. [16-cv-04255-BLF](#)

**ORDER ADOPTING REPORT AND  
 RECOMMENDATION OF  
 MAGISTRATE JUDGE COUSINS AND  
 REMANDING ACTION TO THE  
 SANTA CLARA SUPERIOR COURT**

On August 30, 2016, Defendant William Cutlip filed an objection to the Report and Recommendation (“R&R”) of Magistrate Judge Nathaniel M. Cousins remanding this unlawful detainer action and denying Defendant’s motion to proceed in forma pauperis. *See* ECF 9, 15. The Court has reviewed and thoroughly considered Judge Cousins’ R&R and the arguments in Cutlip’s objection. Finding the R&R correct, well-reasoned, and thorough, the Court adopts it in every respect.

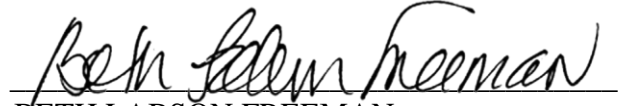
Defendant, as the party seeking removal, bears the burden of demonstrating subject matter jurisdiction. In his objection to Judge Cousins’ R&R, Cutlip raises several objections based on affirmative defenses or counterclaims that he may allege under federal law. ECF 15. However, [f]ederal jurisdiction cannot be predicated on an actual or anticipated defense . . . [n]or can federal jurisdiction rest upon an actual or anticipated counterclaim.” *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009) (internal citations omitted). Cutlip also claims that the action involves a federal question because the action arises out of a federal land patent. *Id.* “Federal land patents . . . [however,] do not provide [a basis] for federal question jurisdiction.” *Virgin v. Cty. Of San Luis Obispo*, 201 F.3d 1141, 1143 (9th Cir. 2000) (citing *Shulthis v. McDougal*, 225 U.S. 561, 569–70 (1912)). Thus, this Court does not have subject matter jurisdiction over this action.

Accordingly, the Court DENIES Cutlip’s motion to proceed in forma pauperis and the

1 above-titled unlawful detainer action is REMANDED to Santa Clara Superior Court.

2 **IT IS SO ORDERED.**

3 Dated: August 30, 2016

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5 BETH LABSON FREEMAN  
6 United States District Judge  
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United States District Court  
Northern District of California